



Battle Creek City Planning Commission

Staff report for December 1, 2010 Special Meeting

To: Planning Commissioners

From: Christine M. Hilton, AICP, Planning Supervisor
City of Battle Creek Planning Department

Date: November 23, 2010

Subject: Petition A-04-10, Amendments to Ch. 1258.04(l), Ch. 1260.03(n), and Ch. 1264.03(h) of the Battle Creek Zoning Ordinance to address land uses associated with medical marihuana.

Attached is the proposed ordinance revision to Chapters 1258.04(l), 1260.03(n), and 1264.03(h) of the Battle Creek Zoning Ordinance to address uses associated with medical marihuana. Also included is the proposed licensing ordinance, Ch. 833; though this ordinance is not subject to review by the Planning Commission, the information contained therein is relevant and necessary in order to fully review and discuss the associated zoning ordinance amendments.

HISTORY / BACKGROUND

Medical marihuana was authorized by referendum in November of 2008, and thereafter, the Michigan Medical Marihuana Act (MMMA) was adopted by the legislature. Communities have reacted to the MMMA in a variety of ways including outright prohibition, various regulatory approaches, or no action pending outcome of possible future court decisions. City Staff was aware that a majority of Battle Creek city voters approved the proposal so that it did not seem likely that the City Commission would want to take the direction of prohibiting medical marihuana completely. Staff therefore spent a considerable amount of time researching and analyzing the MMMA, other community's regulations, and Court decisions that have come down since the adoption of the MMMA so that it could present all of the options available to the Planning and City Commissions.

DISCUSSION OF THE ISSUE

The MMMA introduces many complexities for local government and has the potential to affect many City departments including zoning, building, public safety, public utilities, assessing, etc., as well as many possible effects not only to a particular structure but to the neighborhood and city as a whole. Therefore, many meetings were held, and conversations initiated, with various stakeholders to determine the best balance between City and neighborhood concerns with the needs of the patients.

An initial meeting was organized for the Strategic Leadership Team, which includes management of all City departments, to outline all potential issues that could occur as a result of the MMMA and those

that could possibly be addressed by local regulations. After this meeting, staff from the City Attorney, Licensing and Compliance, Planning, and Police Departments met on a regular basis to discuss and refine possible regulations; subsequent revisions have been submitted to the various departments for review and comment.

The regulatory options compiled by Staff were presented to the Planning Commission and the City Commission at a joint workshop so that staff could get direction on the legal options they wanted to pursue. The direction received by staff from this meeting was for regulation that limited caregivers to non-residential zones due to concern over crime, increased traffic, and housing issues, such as mold or fires from the increased water and electrical demands, of grow operations of up to 72 plants for a caregiver.

In addition to seeking input from both the Planning Commission and City Commission, staff also made efforts to solicit feedback from the public. The City has maintained a contact list for those interested in this topic, and notices of all meetings at which the issues has been discussed have been sent to those individuals in order to solicit input. Additionally, staff has engaged in multiple conversations with proponents of the MMMA, including patients and caregivers, as well as operators of dispensaries and compassion clubs. The general sentiment from those that have addressed staff or the Commissions is that medical marihuana provides physical benefits to patients, and while many have indicated their desire to have very few, if any at all, local regulations, there have been quite a few that have indicated they are not opposed to some local regulations governing caregivers and other non-patient land uses.

PUBLIC HEARING REQUIREMENT

As required by the Zoning Enabling Act of 2006, as amended, a public hearing is required for an ordinance amendment, and a notice listing the date, time, and subject of a public hearing is required to be advertised no less than fifteen days prior to the hearing. As such, the public hearing notice was published in the Battle Creek Enquirer on Tuesday, November 16, 2010. Any written correspondence received will be printed and submitted to the Planning Commission at the meeting.

OVERVIEW OF PROPOSED CHAPTER 833

While the MMMA addresses only the roles of patients and caregivers, there are those that would interpret the law to allow other land uses including compassion clubs, dispensaries, and smokehouses where medical marihuana can be dispensed by other than a caregiver to his or her patient and where marihuana can be freely smoked. The State agency charged with establishing the regulations for MMMA does not agree with that interpretation, nor does the City Attorney.

It must be noted that no where in the MMMA does it authorize persons to establish an entity, whether it be called a dispensary, compassion club, or something else, where persons can obtain medical marihuana from someone other than the caregiver he or she has designated with the Michigan Department of Community Health. Nor does it authorize a caregiver to take excess medical marihuana for the purpose of it being distributed to someone other than a patient registered to him or her with the Michigan Department of Community Health.

The proposed ordinance, Chapter 833, was drafted with the intent to provide patients with the best access to medicinal marihuana within the constraints of the MMMA. Accordingly, proposed Chapter 833 outlines definitions and restrictions for the different types of land uses that have resulted from the approval of the MMMA and does not allow dispensing of medical marihuana to a patient by anyone other than his or her designated caregiver or smoking medical marihuana other than in a private compassion club where growing and dispensing is not allowed.

The attached spreadsheet summarizes these land uses and the proposed limitations of each. Patients and Qualifying Households would be allowed in a patients' own legal residence; caregivers and compassion clubs would be allowed with limitations in certain zoning districts, as outlined in the proposed amendment A-04-10.

PROPOSED AMENDMENT A-04-10

Amendments to Ch. 1258.04(l), Ch. 1260.03(n), and Ch. 1264.03(h) of the Battle Creek ordinance address those land uses, other than patients, associated with the MMMA. These land uses and their respective proposed zoning districts were shown on the zoning map presented at the last Planning Commission meeting. Please note that the 1,000 feet limit from schools and licensed day cares is consistent with standards for Drug Free School Zone, which also has a boundary of 1,000 feet due to the possible negative effect to children. The proposed changes are highlighted on the attached ordinance amendments, and summarized herein:

Compassion Clubs

Because of the support services, including networking and linking to resources, that a compassion club primarily attempts to provide, staff found it similar in nature to uses allowed in the O-1 Office District, as well as the Purpose of the district, Ch. 1258.02, which states: "The O-1 Office District is composed of certain land and structures used primarily to provide office space for private, quasi-public and public uses and certain service uses which are compatible to office building use.....". Permitting compassion clubs by right in the O-1 Office District will also allow these facilities in the C-1, C-2, C-3, C-4 and I-1 zoning districts.

Initially the proposed ordinance Ch. 833 limited the activities at these locations to only support services; however, because of concerns expressed at the last Planning Commission meeting that patients may not have adequate space in their own home to consume their medical marihuana, the proposed ordinance was revised to include consumption at compassion clubs with the requirement that those allowing consumption be limited to those parcels located 1,000 feet away from school or day cares. Please be aware that distribution at these facilities would be prohibited and patients will be allowed to consume only their own medical marihuana that they bring to the facility.

The verbiage of the amendment to permit compassion clubs in the O-1 Office District is as follows:

1258.04(l) Compassion Clubs, as defined in Chapter 833. Those allowing on-site consumption in accordance with Chapter 833.08 shall be located more than 1,000 feet from any parcel occupied by a private or public school or licensed day care;

Single Primary Caregiver

The MMMA allows each caregiver to provide services to five patients. If the caregiver is also a patient, they would be allowed to grow a total of 72 plants (12 plants per patient) and have 15 ounces of usable marihuana (2.5 ounces per patient) at any one time. Because of the negative secondary effects of maintaining this amount of plants and usable marihuana, including building safety, crime, and traffic, there were concerns of allowing a single primary caregiver in residential areas.

Upon reviewing other zoning districts, staff found it similar in nature to uses allowed in the C-1 Neighborhood Commercial District, as well as the Purpose of the district, Ch. 1260.02, which states: “The C-1 Neighborhood Commercial District is intended to establish and preserve areas for those commercial uses and facilities which are especially useful in close proximity to residential areas, while minimizing the undesirable impact of such uses on the neighborhoods which they serve”. Permitting single primary caregivers by right in the C-1 Neighborhood Commercial District will also allow these facilities in the C-2, C-3, C-4 and I-1 zoning districts.

The verbiage of the amendment to permit single primary caregivers in the C-1 Neighborhood Commercial District is as follows:

1260.03(n) Primary Caregiver Operations, as defined in Chapter 833, when located more than 1,000 feet from any parcel occupied by a private or public school or licensed day care;

Multiple Primary Caregivers

The ordinance proposes to allow a group of caregivers to cultivate and process medical marihuana from the same facility, with limitations, in order to share in the associated costs. Due to the number of plants and amount of usable marihuana that could be allowed at a facility, and the resulting increase in traffic, needed public services, and building requirements to accommodate multiple caregivers, staff finds that this land use is suitable for a higher intensive commercial district than C-1 as with the single primary caregivers.

Staff does find this land use consistent with uses permitted in the C-3 Intensive Business District, as well as the Purpose of the district, Ch. 1264.02, which states: “The C-3 Intensive Business District is intended to accommodate those business activities that typically generate large volumes of motor vehicle traffic, that require large areas of off-street parking, that produce, in varying amounts, noise, glare, odors, dust, hazards and that are potential obstacles to an efficient and convenient general business district”. Permitting multiple primary caregivers by right in the C-3 Intensive Business District will also allow these facilities in the C-4 and I-1 zoning districts.

The verbiage of the amendment to permit multiple primary caregivers in the C-3 Intensive Business District is as follows:

1264.03(h) Multiple Primary Caregiver Operations, as defined in Chapter 833, when located more than 1,000 feet from any parcel occupied by a private or public school, licensed day care, or other multiple primary caregiver operations.

RECOMMENDED ACTION

As the proposed ordinance was drafted based upon the consensus of the City departments, City Commission, and the Planning Commission with the intent to ensure patients have access to medical marihuana within the limits of the MMMA, and each of the land uses are consistent with the stated purpose and other land uses permitted in the respective zoning district, as outlined herein, staff is requesting that the Planning Commission recommend approval of the proposed ordinance A-04-10 to the City Commission.